

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Public Service Electric and Gas Company,
PSEG Energy Resources & Trade LLC, and
Exelon Generation Company, LLC

Docket No. ER06-830-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued June 1, 2006)

1. In this order, we grant an application by Public Service Electric and Gas Company (PSE&G) and PSEG Energy Resources & Trade LLC (PSEG Trade) (collectively, the PSE&G Companies) requesting Commission authorization for PSEG Trade to make wholesale power sales to its affiliate, PSE&G, pursuant to PSEG Trade's market-based rate tariff, to become effective on June 1, 2006. PSEG Trade will make these sales pursuant to a contract to supply electricity for a portion of PSE&G's Basic Generation Service (BGS)¹ awarded through the auction bidding process (BGS auction) approved by the New Jersey Board of Public Utilities (New Jersey Board). The Commission grants PSE&G Companies' request for waiver of applicable provisions in the code of conduct and market-based rate tariff of PSEG Trade, to the limited extent necessary to permit PSEG Trade to make market-based rate sales to PSE&G pursuant to PSE&G's 2006 BGS auction, effective June 1, 2006. The Commission also grants waiver of the applicable provisions in the code of conduct and market-based rate tariff, to the limited extent necessary, for Exelon Generation Company, LLC (Exelon Generation), upon closing of the merger of Exelon Corporation and Public Service Enterprise Group Incorporated (PSEG Group), to make wholesale power sales to its affiliate, PSE&G, resulting from

¹ BGS is electric generation service that is provided by a New Jersey electric distribution company to any retail customer who has not chosen an alternative power supplier. BGS is known in other states as "provider of last resort service" or "default service."

PSE&G's 2006 BGS auction and prior auctions, once Exelon Generation succeeds to PSEG Trade's ongoing sales. This order concludes that this competitive solicitation, as described below, satisfies the Commission's concerns regarding affiliate abuse and will result in rates that are just and reasonable.

Background

2. On April 3, 2006, the PSE&G Companies filed the instant application under section 205 of the Federal Power Act² (FPA) requesting authorization to make wholesale power sales to its affiliate, PSE&G. The PSE&G Companies request waiver, to the extent necessary, of the applicable provisions in their codes of conduct and market-based rate tariffs and the Commission's regulations to permit PSEG Trade to make sales to its affiliate, PSE&G, pursuant to contracts to supply electricity for a portion of PSE&G's BGS awarded through the auction bidding process approved by the New Jersey Board. PSE&G Companies state that service under the aforementioned contracts will commence on June 1, 2006.

3. PSE&G is a public utility that, among other things, serves retail customers in New Jersey. PSE&G's transmission facilities are under the operational control of PJM Interconnection, L.L.C. (PJM).³ PSEG Trade is a power marketing affiliate of PSE&G.

4. Exelon Generation is the generation and energy power marketing arm of Exelon Corporation. Exelon Corporation's transmission facilities are under the operational control of PJM. The applicants state that, upon closing of Exelon Corporation's merger with the PSEG Group,⁴ PSEG Trade will cease to exist as a separate entity and will become part of Exelon Generation and that Exelon Generation will succeed to the obligations of PSEG Trade.

5. Therefore, Exelon Generation also requests that the Commission grant waiver, to the extent necessary, of the applicable provisions in their codes of conduct and market-based rate tariffs and the Commission's regulations to permit Exelon Generation to

² 16 U.S.C. § 824d (2000).

³ See *Pennsylvania-New Jersey-Maryland Interconnection, L.L.C.*, 81 FERC ¶ 61,257 (1997), *order on reh'g*, 92 FERC ¶ 61,282 (2000).

⁴ *Exelon Corp.*, 112 FERC ¶ 61,011 (2002).

continue PSEG Trade's sales arising from PSE&G's 2006 BGS auction and prior BGS auctions.⁵

6. The PSE&G Companies state that, pursuant to state electric restructuring legislation,⁶ the New Jersey Board approved statewide bidding auctions as the means for procuring BGS for electric customers in New Jersey.⁷ The PSE&G Companies state that on December 8, 2005, the New Jersey Board approved auctions to determine the suppliers of the BGS load for the period beginning on June 1, 2006.⁸ The PSE&G Companies state that the 2006 auction design is substantially identical in all material respects to the terms and structure of the auction design that was approved by the New Jersey Board, and used by New Jersey utilities, for BGS auctions held in 2002, 2003, 2004, and 2005.⁹ The PSE&G Companies further state that the PSE&G BGS auction allowed potential suppliers to bid for the right to supply products in two auctions: BGS-Commercial and Industrial Energy Pricing (BGS-Commercial), a variable hourly-priced product; and BGS-Fixed Energy Pricing (BGS-Fixed), a seasonally fixed-price product.

7. The PSE&G Companies state that the auction ended on February 7, 2006, and the New Jersey Board reviewed and certified the results, granting the distribution companies authority to enter into standardized contracts for the provision of BGS-Fixed and BGS-

⁵ The Commission approved the proposed merger under section 203 of the FPA, 16 U.S.C. § 824b (2000), on July 1, 2005. *See Exelon Corp.*, 112 FERC ¶ 61,011 (2002).

⁶ April 3 Filing at 5 (citing Electric Discount and Energy Competition Act of 1999, N.J. Stat. Ann. §§ 48:3-49 *et seq.* (initiating the transition from a regulated to a competitive retail power market in New Jersey)).

⁷ PSE&G, Atlantic City Electric Company, Jersey Central Power & Light Company, and Rockland Electric Company submitted a joint proposal for BGS procurement (BGS Joint Proposal). Each participant also submitted a company-specific addendum the BGS Joint Proposal.

⁸ *In the Matter of the Provision of Basic Generation Service for the Period Beginning June 1, 2006*, Docket No. EO05040317 (Dec. 8, 2005) (BPU December Decision).

⁹ April 3 Filing at 10-11; *see also Pub. Serv. Elec. & Gas Co.*, 111 FERC ¶ 61,152 (2005) (*PSEG*) where the Commission reviewed and accepted PSE&G's 2005 BGS auction as satisfying its concerns regarding affiliate abuse.

Commercial service for the 2006 period.¹⁰ PSEG Trade states that it has won tranches for both types of BGS service for PSE&G load.¹¹ The PSE&G Companies state that PSEG Trade, therefore, executed with PSE&G the standard *pro forma* Master Supplier Agreements approved by the New Jersey Board for services commencing on June 1, 2006.

8. Finally, the PSE&G Companies state that the Commission has previously authorized the PSE&G Companies to enter into contracts pursuant to the BGS auction.¹² In order to meet the Commission's requirements for sales between affiliates, the PSE&G Companies offer evidence that PSE&G's 2006 BGS auction falls within the Commission's guidelines for determining when a competitive bidding process satisfies the Commission's concerns regarding affiliate abuse.¹³

Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 23,913 (2006), with motions to intervene and protests due on or before April 24, 2006. None was filed.

Discussion

10. The Commission has stated that, in cases where affiliates are entering into market-based rate sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.¹⁴ The Commission has approved affiliate sales resulting from competitive bidding processes

¹⁰ See *In the Matter of the Provision of Basic Generation Service for the Period Beginning June 1, 2006 – Auction Results*, Docket No. EO05040317, at 6 (Feb. 23, 2006) (BPU February Decision).

¹¹ A tranche is a full requirements (capacity, transmission, energy, ancillary services, etc.) product and represents a fixed percentage share of an electric distribution company's load for a specific period. BPU December Decision at 3. We note, however, that according to supporting documents filed herein, the New Jersey Board reports PSEG Trade as a winner for the BGS-Fixed auction.

¹² April 3 Filing at 8 (citing *Pub. Serv. Elec. & Gas Co.*, Docket No. ER04-530-000 (Mar. 11, 2004) (unpublished letter order); *PSEG*, 111 FERC ¶ 61,152 (2005).

¹³ See *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

¹⁴ See *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382, at 62,167 (1991) (*Edgar*).

after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.¹⁵ When an entity presents this kind of evidence, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.¹⁶

11. In *Allegheny*, the Commission provided guidance as to how the Commission will evaluate whether a competitive solicitation process such as PSE&G's BGS auction meets the *Edgar* criteria. As the Commission stated, the underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission indicated that the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle: (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection. As discussed below, the Commission finds that PSE&G's BGS auction is an example of a process that meets these guidelines.

Transparency Principle

12. The PSE&G Companies state that the PSE&G BGS auction satisfies the Commission's guidelines regarding transparency.¹⁷ The PSE&G Companies state that the Auction Manager developed the auction design structure and supported this design before the New Jersey Board for the first BGS auction in 2002 and subsequent BGS auctions. All interested parties were involved in a collaborative process in the auction

¹⁵ See *Connecticut Light & Power Co.*, 90 FERC ¶ 61,195, at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217, at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027, at 61,059-60 (1999); *Edgar*, 55 FERC at 62,167-69; see also *Allegheny*, 108 FERC ¶ 61,082.

¹⁶ *Edgar*, 55 FERC at 62,168.

¹⁷ April 3 Filing at 11. Information such as auction rules and *pro forma* BGS contracts were made available at www.bgs-auction.com.

design phase in an on-the-record proceeding before the New Jersey Board.¹⁸ Moreover, PSEG Companies state that PSE&G's BGS auction design approved by the New Jersey Board in the years subsequent to the first BGS auction held in 2002 has included certain enhancements, but did not alter the original basic design.¹⁹ The PSE&G Companies further state that, as in previous years, the terms of PSE&G's BGS auction and all relevant information were provided on the auction website and were discussed at bidder information sessions open to all potential participants. The PSE&G Companies also state that the independent auction manager received questions from interested parties and posted the questions and answers on the BGS auction website where they could be accessed by all other interested parties.²⁰ The PSE&G Companies state that the terms and conditions of PSE&G's 2006 BGS auction are substantially identical to the terms and conditions used in 2005.

13. Based upon the PSE&G Companies' representations and the Commission's review of the supporting documents, we find that PSE&G's 2006 BGS auction is consistent with the transparency principle guidelines.

Definition Principle

14. The PSE&G Companies state that, as in previous years, the products were clearly defined in the auction materials and the standardized BGS-Commercial and BGS-Fixed contracts.²¹ The PSE&G Companies also state that all participants are required to provide exactly the same services that are described in these documents. Specifically, the PSE&G BGS auction consists of two simultaneous, multi-round, descending clock auctions for the procurement of services to meet the full requirements of customers that have not chosen a third-party supplier.²² The BGS-Commercial auction procures hourly-priced service for one year beginning on June 1, 2006 for the larger commercial and industrial customers in tranches of 25 MW, and the BGS-Fixed auction procures fixed-priced service for one-third of other customers for a three-year period beginning June 1, 2006 in tranches of 100 MW.²³ The PSE&G Companies state that the terms and structure

¹⁸ BPU December Decision at 5-6.

¹⁹ April 3 Filing at 12.

²⁰ Answers are located at www.bgs-auction.com/bgs.faq.all.desc.asp.

²¹ April 3 Filing at 11.

²² BPU December Decision at 3.

²³ *Id.* The other two-thirds of the fixed priced load requirements were previously secured through BGS auctions in February 2004 and February 2005. BPU December Decision at 3 n.3; BPU February Decision at 1 n.2.

of PSE&G's 2006 BGS auction are substantially identical to the terms and structure used in 2005.

15. According to the auction results, PSE&G sold 46 tranches in the BGS-Commercial auction and 29 tranches in the BGS-Fixed auction.²⁴ Information about the specific tranches won by PSEG Trade is not yet available because the New Jersey Board has not yet released the specific tranche and service area details for each successful bidder so as *not* to compromise the position of the winning bidders in the marketplace.²⁵

16. Based upon the PSE&G Companies' representations and the Commission's review of the supporting documents, we find that PSE&G's 2006 BGS auction is consistent with the definition principle guidelines.

Evaluation Principle

17. The PSE&G Companies state that, as in previous years, PSE&G's BGS auction selected winning bidders based solely on the lowest price offered to serve the required volume of load.²⁶ The PSE&G Companies further state that standardized credit evaluation criteria, approved by the New Jersey Board, were set forth in detail in the auction rules and the BGS contracts. The PSE&G Companies also state that a number of options were provided to potential bidders to satisfy credit support criteria. The PSE&G Companies state that the terms and structure of PSE&G's 2006 BGS auction are substantially identical to the terms and structure used in 2005.

18. Based upon the PSE&G Companies' representations and the Commission's review of the supporting documents, we find that PSE&G's 2006 BGS auction is consistent with the evaluation principle guidelines.

Oversight Principle

19. The PSE&G Companies state that, as in previous years, the PSE&G BGS auction design incorporated third-party oversight.²⁷ The PSE&G Companies further state that they retained the same independent consulting firm in the role of Auction Manager that

²⁴ See BPU February Decision at 2-3. The results also indicate that PSEG Trade was a winning bidder for BGS-Fixed only. BPU February Decision at 6.

²⁵ BPU February Decision at 5. The New Jersey Board states that it plans to make this additional information public prior to June 1, 2006. *Id.*

²⁶ April 3 Filing at 11.

²⁷ *Id.*

served in that role in previous BGS auctions.²⁸ The PSE&G Companies state that the Auction Manager was responsible for day-to-day administration of the auction process. In addition, the PSE&G Companies state that the New Jersey Board retained a consulting firm, acting as Auction Advisor, to assist the Board in its oversight of the BGS auction process.²⁹ The PSE&G Companies contend that the New Jersey Board's Auction Advisor oversaw all aspects of the conduct of the auction and reported directly to the New Jersey Board. According to the New Jersey Board, PSE&G's BGS auction was continuously monitored by staff from the New Jersey Board in addition to the Auction Advisor.³⁰ Both the Auction Manager and Auction Advisor provided reports to the New Jersey Board on how the BGS auctions were conducted, both of which indicate that PSE&G's 2006 BGS auction proceeded in a fair and transparent manner and recommended that the New Jersey Board accept the final results of the auctions.³¹ The PSE&G Companies state that the terms and structure of PSE&G's 2006 BGS auction are substantially identical to the terms and structure used in 2005.

20. Based upon the PSE&G Companies' representations and the Commission's review of the supporting documents, we find that PSE&G's 2006 BGS auction is consistent with the oversight principle guidelines.

21. Accordingly, the Commission concludes that the competitive solicitation process described by the PSE&G Companies satisfies the Commission's concerns regarding affiliate abuse. This order satisfies the requirement that PSEG Trade first receive Commission authorization pursuant to section 205 of the FPA before engaging in power sales at market-based rates with an affiliate. Therefore, the Commission grants the PSE&G Companies' request for authorization to make affiliate sale, discussed herein, including granting waiver of applicable provisions in the code of conduct and market-based rate tariff of PSEG Trade, to the extent necessary to permit PSEG Trade to make market-based rate sales to PSE&G pursuant to PSE&G's 2006 BGS auction, effective June 1, 2006.

22. Contingent upon closing of the merger of Exelon Corporation and the PSEG Group, and upon the terms and conditions of the affiliate sales resulting from PSE&G's 2006 and prior BGS auctions remaining the same as described herein, once Exelon

²⁸ *Id.* at 11-12. Under the transparency principle, at 11, PSE&G states that its Auction Manager is independent.

²⁹ April 3 Filing at 12.

³⁰ BPU February Decision at 1.

³¹ *Id.* at 3.

Generation succeeds to PSEG Trade's ongoing sales, this order satisfies the requirement under Exelon Generation's market-based rate tariff that Exelon Generation first receive Commission authorization pursuant to section 205 of the FPA before engaging in power sales under its market-based rate tariff with an affiliate. Therefore, the Commission grants Exelon Generation's request for authorization to make affiliate sales to PSE&G, including granting waiver of applicable provisions in the code of conduct and market-based rate tariff to the limited extent necessary to permit it to make affiliate sales to PSE&G resulting from PSE&G's 2006 and prior BGS auctions, effective upon the date of closing of the merger. We will direct Exelon Generation to inform the Commission of the date of the closing of the merger within 30 days of the closing.³²

23. Consistent with the procedures the Commission adopted in Order No. 2001, PSEG Trade (and, upon closing of the merger, Exelon Generation) must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.³³ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.³⁴

³² *Exelon Generation Co., LLC*, 112 FERC ¶ 61,027, at P 30 (2005) (directing combined Exelon-PSEG entity to file a revised generation market power analysis to reflect the circumstance of the merged company within 30 days of consummation of merger).

³³ Required data sets for contractual and transaction information to be reported in Electric Quarterly Reports (EQR) are described in Attachments B and C of Order No. 2001. The EQR must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

³⁴ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

The Commission orders:

(A) The application for authorization for PSEG Trade to make market-based rate sales to its affiliate, PSE&G, resulting from PSE&G's 2006 BGS auction, is hereby granted, effective June 1, 2006, as discussed in the body of this order.

(B) Waiver of applicable provisions in the code of conduct and market-based rate tariff, to the limited extent necessary, to permit PSEG Trade to make sales to its affiliate, PSE&G, resulting from PSE&G's 2006 BGS auction is hereby granted, as discussed in the body of this order.

(C) Waiver of the applicable provisions in code of conduct and market-based rate tariff, to the limited extent necessary, to permit Exelon Generation to make sales to its affiliate, PSE&G, pursuant to PSE&G's 2006 and previous BGS auctions is hereby granted, effective on the closing date of the merger, as discussed in the body of this order.

(D) Exelon Generation is hereby directed to inform the Commission of the closing of the merger within thirty (30) days of the date of closing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.